IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

Ins.APPEAL.No. 40 of 2003()

IC.72/2000 of EMPLOYEES INSURANCE COURT, ALAPPUZHA

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APPELLANT/APPLICANT:

M/S. SPARTAN PRINTERS,
VAZHICHERRY, ALAPPUZHA, REPRESENTED BY ITS PARTNER
A.K.PALANIAPPAN.

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS: OPPOSITE PARTIES:

1. THE REGIONAL DIRECTOR,
E.S.I. CORPORATION, E.S.I.C. BUILDING,
N.S. ROUND, THRISSUR-20.

2. THE RECOVERY OFFICER,
OFFICE OF THE RECOVERY OFFICER, PANCHADEEP BHAVAN,
P.B.NO.2, THRISSUR-20.

R1 & R2 BY ADV. SRI.T.V.AJAYAKUMAR

THIS INSURANCE APPEALS HAVING BEEN FINALLY HEARD ON 30/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON IA.NO.2015/2003 IN INS.APPEAL.NO.40/2003

DISMISSED

30/1/2007 Sd/- P.R.RAMAN, JUDGE.

P.R.RAMAN,J.

INS.APPEAL.NO.40 OF 2003

Dated this the 30th day of January, 2007

JUDGMENT

Appellant was an applicant in I.C.No.72/2000 on the file of the Employees' Insurance Court, Alappuzha. The lst respondent herein sought to cover the establishment. Appellant contended that there are only six employees and therefore the employment strength is below the minimum strength for coverage of the establishment. In support of the plea Exs.P1 to P16 were marked and PW-1 was also examined. On behalf of the respondent ESI Inspector was examined as DW-1 and Exts.D1 to D3 were marked. According to the appellant, it is a partnership firm and one of the partners was also included as an employee of the respective coverage. He pleaded that

there are only six number of employees. The Insurance Court while appreciating the plea held that if one among the ten employees happened to be the owner, the establishment could not be covered, as it will not satisfy the minimum strength required for coverage. The Inspector, who was examined as DW-1, was ignorant regarding these facts. In those circumstances, the application was allowed and the matter was remanded to the lst respondent for investigation on the issue raised. While remanding the matter the Insurance Court held that the respondent has to make a detailed investigation on the issue raised whether the brother of PW-1 Ponnappan had his own printing press on the date on which Ext.D1 was given by including his name also in the list of 10 employees. But the fact remains that the Insurance Court did not enter any finding that

excluding Ponnappan, the brother of PW-1, there will be 9 employees. In other words, without any finding as to the actual strength in the establishment, the matter is remanded to the lst respondent. The matter is at large before the Regional Director of the E.S.I. Corporation. In the circumstances, the order passed by the Insurance Court remanding the case for the limited purpose as to whether PW's brother Ponnappan has got any separate establishment and whether one of the employees is the owner of the establishment, does not appear to be correct. Besides the above question, the matter may be re-investigated by the Regional Director of Insurance Corporation and arrive at a finding as to how many employees are there in the establishment and then take a decision in the matter, after affording an opportunity of being heard to the

appellant. Thus, the remand is modified into an open remand and the contentions raised by the appellant also be gone into by the respondents.

The appeal stands allowed as above.

P.R.RAMAN,
Judge.

kcv.